IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 16 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

AND

HONOURABLE MR.JUSTICE H.B.ANTANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

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RAMAASHRE RAMESHWAR KEVAT - Appellant

Versus

STATE OF GUJARAT - Opponent

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Appearance :
MR G RAMAKRISHNAN for the Appellant.
MR LR POOJARI, ASSISTANT PUBLIC PROSECUTOR for the Opponent.
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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 02/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The present appeal preferred under Section 374 of the Code of Criminal Procedure, 1973 (for short, ***"Cr. P. C."***) is directed against judgment and order passed by the learned Joint District Judge on 28-10-2002 in Sessions Case No. 85 of 2001, by which the learned Additional District Judge convicted the appellant under Section 376 of the Indian Penal Code, 1860 (for short, ***"IPC")***, and imposed RI of 10 years and fine of Rs. 5,000/-, in default further SI for 2 years. It has also been directed that the amount of fine realized from the appellant be paid to the prosecutrix.

2. The short facts giving rise to the present appeal are as under:

The appellant, as per the prosecution case, called the daughter of the complainant on 09-01-2001 in the afternoon in his room and committed rape on her against her desire and will, and thereby, committed the offence of rape. The complaint was given by the father of the victim before the Kosamba Police Station and the same was registered as CR No.

I-3 of 2001. On the strength of the complaint, the place, where the actual offence was committed, was visited and the *panchnama* with regard to the place of incident was prepared. The *panchnama*, with regard to the clothes put on by the appellant as well as the victim, was also prepared. The victim as well as the appellant were sent to the hospital for the purpose of examination. The statement of the witnesses were recorded during the course of investigation. Blood sample, clothes of the victim and the accused, sample of semen, etc, were obtained for the purpose of sending the same to Forensic Science Laboratory. On receiving the report of the FSL and the examination report of the victim and the appellant-accused, the appellant was produced before the learned Chief Judicial Magistrate, who committed the case to the Sessions Court under Section 209 of the Cr. P. C. on 19-04-2001 as the case has been exclusively triable by the Sessions Court.

3. The charge against the appellant has been framed *vide* Exh. 6 on 14-03-2002 by the learned Additional Sessions Judge, Surat, and the appellant pleaded not guilty to the charge levelled against him. Therefore, the matter was set down for full-

fledged trial before the Sessions Court.

4. The prosecution has examined the following witnesses in order to bring home the guilt against the appellant:

(i) PW-1 Dr. Rajendrakumar Arvindlal Seth *vide* Exh. 9.

(ii) PW-2 Dr. Chetan Kiritbhai Choksi *vide* Exh. 13.

(iii) PW-3 Ashokkumar Rajaram Avasthi *vide* Exh. 22.

(iv) PW-4 Prosecutrix *vide* Exh. 23.

(v) PW-5 Meenaben Ashokkumar Rajaram *vide* Exh. 24.

(vi) PW-6 Devraj Khalil Dakwa *vide* Exh. 25.

(vii) PW-7 Lambodar Devraj *vide* Exh. 26.

(viii) PW-8 Ayub Karim Gulzar *vide* Exh. 27.

(ix) PW-9 Dhirubhai Virjibhai *vide* Exh. 33.

(x) PW-10 Iswharbhai Karamsinhbhai Desai *vide* Exh. 36.

The prosecution has placed reliance on the following documentary evidence:

(i) Complaint given by Ashokkumar Rajaram Awasthi *vide* Exh. 42.

(ii) Certificate issued by the Medical Officer, New Civil Hospital, Surat *vide* Exh. 14.

(iii) Treatment papers issued to prosecutrix *vide* Exh. 15.

(iv) Letter written to the Director, FSL, Surat by PSO *vide* Exh. 16.

(v) Certificate given by the hospital authority to the victim *vide* Exh. 17.

(vi) *Panchnama* with regard to the examination of the person of the accused and the clothes put on by him vide Exh. 28.

(vii) Panchnama with regard to the place of incident *vide* Exh. 30.

(viii) *Panchnama* with regard to the seizure of articles *vide* Exh. 34.

(ix) Letter written to the Police Sub-Inspector, Kosamba Police Station by the Director, FSL *vide* Exh. 37.

(x) FSL Report and analysis *vide* Exh. 38.

(xi) Serologist Report vide Exh. 39.

(xii) Note sent to FSL *vide* Exh. 40.

(xiii) Receipt given by Assistant Director, FSL *vide* Exh. 41.

(xiv) Details with regard to the sample *vide* Exh. 39.

(xv) Certificate given by Sadhna Kutir Hospital *vide* Exh. 44.

(xvi) Certificate given by Government Medical College, New Civil Hospital, Surat to the prosecutrix *vide* Exh. 47.

5. On conclusion of the trial before the Sessions Court, the statement of the appellant was recorded under Section 313 of Cr. P. C.

6. The learned Joint District Judge, 3rd Fast Track Court, Surat, after going through the oral deposition and the documentary evidence held that the appellant had committed rape on prosecutrix on 09-01-2001 in his house against her will and desire. The deposition adduced by the prosecutrix was taken into consideration by the learned Judge while imposing the sentence on the appellant under Section 376 of IPC for a period of 10 years RI and fine of Rs. 5000/-, in default SI for 2 years. The learned Judge held that the deposition adduced by the prosecutrix gets necessary corroboration from the deposition of PW-5 Meenaben at Exh. 24 as well as PW-3 father of the

prosecutrix at Exh. 22, and, therefore, the prosecution has proved the case against the appellant beyond all reasonable doubt. The learned Judge held that the prosecutrix was approximately of 9 years of age, and since the medical evidence on record of the case supports the prosecution version, the appellant had committed rape on her. The learned Judge, thus, imposed the sentence on the appellant under Section 376 IPC for a period of 10 years RI and fine of Rs. 5000/-, in default SI for 2 years.

7. The learned Advocate appearing on behalf of the appellant submitted that the deposition adduced by the father of the prosecutrix as well as the mother of the prosecutrix are inconsistent and full of contradictions and, therefore, benefit of the same is required to be given to the appellant. The learned Advocate submitted that the deposition adduced by the prosecutrix does not inspire necessary confidence so as to indicate the involvement of the appellant in the commission of offence. If the deposition adduced by the prosecutrix is perused in proper perspective, then at the most, it can be said that an attempt was made by the appellant to commit rape on the victim and actually the rape was not

committed by the appellant on the victim. Thus, taking into account the deposition adduced by the prosecutrix, the appellant could not be said to have committed rape on her within the meaning of Section 376 IPC. The learned Advocate further submitted that the deposition adduced by PW 1 Dr. Rajendrakumar Arvindlal Avasthi at Exh. 9 and PW 2 Dr. Chetan Kiritbhai Choksi at Exh. 13 also do not support the prosecution case. If the certificate issued by the hospital authority is taken into consideration, which is produced at Exh. 47, then it becomes clear that the history of intercourse was naratted by the mother of the victim and not by the victim. The learned Advocate submitted that as the mother and father of the victim wanted to falsely implicate the appellant in the commission of offence, false history was given by the mother of the victim with a view to foist false case of rape on the appellant. The learned Advocate heavily placed reliance on the explanation given by the appellant under Section 313 of the Cr. P. C. in support of the contention that the appellant was demanding Rs. 3000/- from the father of the victim and as the father of the victim was not in a position to pay back the aforesaid amount, he falsely implicated the appellant in the commission of

offence. Thus, taking into account the inconsistency in the depositions adduced by the prosecution, the judgment and order passed by the learned Additional Sessions Judge requires to be quashed and set aside and the appellant be acquitted forthwith.

8. Mr. L. R. Poojari, learned Additional Public Prosecutor representing the State, vehemently submitted that the complaint was given by the father of the victim *vide* Exh. 42 wherein he narrated as to how the rape was committed on his daughter by the appellant. In support of the complaint given by the him, he himself has given deposition *vide* Exh. 22. The deposition given by father Ashokkumar Rajaram gets necessary support from the mother of the victim, Meenaben, who has been examined *vide* Exh. 24. The mother narrated the incident which was told to her by prosecutrix on 09-01-2001. Thus, on perusal of the deposition adduced by father and mother, it becomes clear that the age of the victim was about 9 – 10 years on the date of the incident. The prosecutrix, examined *vide* Exh. 23, in clear terms indicated the involvement of the appellant in the commission of rape on 09-01-2001. There is no reason to disbelieve or discard the version adduced by the prosecutrix, as

she had no axe to grind against the appellant-accused. The learned Additional Public Prosecutor further submitted that over and above the deposition adduced by father and mother as well as the prosecutrix, the other evidence such as the *panchnama* of the place of incident, the *panchnama* of the clothes put on by the victim as well as the appellant, the medical certificate issued by hospital authority in favour of the victim as well as the appellant and the FSL Report produced in the case provides necessary corroboration to the prosecution story indicating the involvement of the appellant in the commission of offence. The learned Additional Public Prosecutor submitted that although corroboration in the commission of offence involving rape is not required, there is ample corroboration in the present case indicating involvement of the appellant in the commission of offence. Thus, the learned Advocate submitted that taking into account the entire gamut of oral deposition and the documentary evidence, the learned Judge has rightly convicted the appellant under Section 376 IPC for a period of 10 years RI and fine of Rs. 5000/-, in default further SI of 2 years and, therefore, the judgment and order rendered by the learned Judge does

not call for any interference in the appeal preferred by the appellant and the appeal deserves to be dismissed.

9. This Court has heard Mr. G. Ramakrishnan, learned Advocate for the appellant and Mr. L. R. Poojari, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The prosecutrix in the present case was raped by the appellant on 09-01-2001 in his house against her will and desire. That fact has been amply proved by the prosecution if we read the deposition adduced by the PW-4 prosecutrix *vide* Exh. 23. Complaint with regard to the rape committed by the appellant on the victim was given by the father of the victim Ashokkumar Rajaram *vide* Exh. 42 wherein he has narrated as to how the rape was committed by the appellant on his daughter, who was approximately of the age of 9 to 10 years on the date of incident. Ashokkumar has also given the deposition *vide* Exh. 22

wherein he has narrated the age of his daughter on the date of incident as 11 years old. The incident of rape was narrated to him by his wife.

The mother of the victim, PW-5 Minaben, has been examined *vide* Exh. 24. She has mentioned the age of her daughter on the date of incident as of 11 years. She was narrated the incident by the victim. She has deposed as to how the rape was committed by the appellant on her daughter.

PW-1 Dr. Rajendrakumar Arvindlal has deposed in his testimony at Exh. 9 that he had examined the appellant on 09-01-2001. The appellant had admitted to the doctor about the rape committed by him on victim. After examining the appellant, necessary certificate in that regard was issued by him.

PW-2 Dr. Chetan Kiritbhai Choksi has been examined *vide* Exh. 13. He had examined the victim on 11-01-2001 and issued the Medical Certificate to the victim. History given by the victim about the rape committed by the appellant has been elaborately narrated in the certificate.

The certificate issued by the Medical Officer, New Civil Hospital, *vide* Exh. 14 makes it clear that on the date of incident, the age of the prosecutrix was below 14 years. Necessary corroboration to the aforesaid deposition is provided by PW-6 Devraj Khalil Dakwa at Exh. 25, PW-7 Lambodar Devraj at Exh. 26, PW-8 Ayub Karim Gulzar *vide* Exh. 27, PW-9 Dhirubhai Virjibhai at Exh. 33. The documentary evidence, such as, *panchnama* with regard to the examination of the person of the accused and the clothes put on by the appellant *vide* Exh. 28, *panchnama* with regard to the place of incident produced *vide* Exh. 30, the FSL Report and analysis *vide* Exh. 38 as well as Serologist's Report *vide* Exh. 39 lend further corroboration to the prosecution case indicating the involvement of the appellant in the commission of offence.

11. In view of the foregoing discussion and taking into account the overwhelming evidence adduced by the prosecution against the appellant, we do not find that the order passed by the learned Joint District Judge, 3rd Fast Track Court, Surat, calls for any interference in the appeal preferred by the appellant. The appeal, therefore, in our view is

liable to fail, and hence, we pass the following order:

ORDER

For the foregoing reasons, we hereby confirm the judgment and order of conviction dated 28th October, 2002 passed by the learned Joint District Judge, 3rd Fast Track Court, Surat in Sessions Case No. 85 of 2001, by which the learned Judge has imposed sentence of 10 years RI on the accused under Section 376 IPC and fine of Rs. 5000/-, in default SI for 2 years. As the appellant-accused is already undergoing the sentence in prison, he will continue to do so for the remaining part of sentence. However, he will be entitled to get set off, if any, as per the provisions of law. *Muddamal* be destroyed in terms of the order passed by the learned Judge after the appeal period is over.

[ANIL R. DAVE, J.]

[H. B. ANTANI, J.]

/shamnath